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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK  
Case No. 05-44481 (RDD)

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In the Matter of:

DPH HOLDINGS CORP., et al.,

Reorganized Debtors.

- - - - -x

United States Bankruptcy Court  
300 Quarropas Street  
White Plains, New York

April 21, 2011  
10:13 AM

B E F O R E:  
HON. ROBERT D. DRAIN  
U.S. BANKRUPTCY JUDGE

FORTY-THIRD CLAIMS HEARING AGENDA:

HEARING re Claims Objection Hearing Regarding Claims of Ohio

Bureau of Workers' Compensation as Objected to on the Debtors'

Thirty-Fourth Omnibus Objection Pursuant to 11 U.S.C. § 502(b)

And Fed. R. Bankr. P. 3007 to (I) Expunge (A) Certain Pension

and OPEB Claims; (B) Certain Individual Workers' Compensation

Claims; (C) Certain Duplicate and/or Amended Individual

Workers' Compensation Claims; (D) Certain Untimely Individual

Workers' Compensation Claims; (E) a Secured Books and Records

Claim; and (F) Certain Untimely Claims; (II) Modify Certain (A)

Wage and Benefit Claims; (B) State Workers' Compensation

Claims; and (C) Individual Workers' Compensation Claims

Asserting Priority; (III) Provisionally Disallow Certain Union

Claims; and (IV) Modify and Allow Certain Settled Claims

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2 HEARING re Claims Objection Hearing Regarding Proofs of  
3 Administrative Expense Claim Numbers 19147 and 19921 of  
4 Navistar, Inc. f/k/a International Truck and Engine Corporation  
5 as Objected to on the Reorganized Debtors' Forty-Third Omnibus  
6 Objection Pursuant to 11 U.S.C. § 503(b) and Fed. R. Bankr. P.  
7 3007 to (I) Expunge Certain Administrative Expense (A)  
8 Severance Claims; (B) Books and Records Claims; (C) Duplicate  
9 Claims; (D) Equity Interests; (E) Prepetition Claims; (F)  
10 Insufficiently Documented Claims; (G) Pension, Benefit, and  
11 OPEB Claims,; (H) Workers' Compensation Claims; and (II)  
12 Transferred Workers' Compensation Claims; (III) Modify and  
13 Allow Certain Administrative Expense Severance Claims; and (IV)  
14 Allow Certain Administrative Expense Severance Claims  
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2 HEARING re Claims Objection Hearing Regarding Claim of Sensata  
3 Technologies, Inc. as Objected to on the Reorganized Debtors'  
4 Forty-Third Omnibus Objection Pursuant to 11 U.S.C. § 503(b)  
5 and Fed. R. Bankr. P. 3007 to (I) Expunge Certain  
6 Administrative Expense (a) Severance Claims; (b) Books and  
7 Records Claims; (c) Duplicate Claims; (d) Equity Interests; (e)  
8 Pre-Petition Claims; (f) Insufficiently Documented Claims; (g)  
9 Pension, Benefit, and OPEB Claims; (h) Workers' Compensation  
10 Claims; and (i) Transferred Workers' Compensation Claims; (II)  
11 Modify and Allow Certain Administrative Expense Severance  
12 Claims; and (III) Allow Certain Administrative Expense  
13 Severance Claims

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15 HEARING re Sufficiency Hearing Regarding Claim Number 9647 of  
16 Longacre Master Fund Ltd., as Transferee of Park Enterprises of  
17 Rochester, Inc., as Objected to on the Debtors' Twenty-Seventh  
18 Omnibus Objection Pursuant to 11 U.S.C. § 502(b) And Fed. R.  
19 Bankr. P. 3007 to Certain Claims to Implement Cure Payments and  
20 Modify General Unsecured Claims by Amount of Cure Payments

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2 HEARING re Sufficiency Hearing Regarding Scheduled Liability  
3 Number 10396186 of Madison Niche Opportunities LLC, as  
4 Transferee of American Cable Company Inc., as Objected to on  
5 the Reorganized Debtors' Forty-Fourth Omnibus Objection  
6 Pursuant to 11 U.S.C. § 502(b) and (d) and Fed. R. Bankr. P.  
7 3007 to (I) Modify And Allow (a) Certain Modified And Allowed  
8 Claims; (b) a Partially Satisfied Claim; and (c) Certain  
9 Partially Satisfied Scheduled Liabilities; (II) Disallow and  
10 Expunge (a) Certain Fully Satisfied Scheduled Liabilities; (b)  
11 Certain MDL-Related Claims; (c) Certain Union Claims; (d)  
12 Certain Personal Injury Claims; and (e) a Duplicate Claim;  
13 (III) Object to Certain (a) Preference-Related Claims; and (b)  
14 Preference-Related Scheduled Liabilities; and (IV) Modify  
15 Certain SERP-Related Scheduled Liabilities  
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2 HEARING re Sufficiency Hearing Regarding Scheduled Liability  
3 Number 10402173 of Madison Investment Trust Series 38, as  
4 Transferee of United Metal Prod Corp EFT, as Objected to on the  
5 Reorganized Debtors' Forty-Fourth Omnibus Objection Pursuant to  
6 11 U.S.C. § 502(b) and (d) and Fed. R. Bankr. P. 3007 to (I)  
7 Modify and Allow (a) Certain Modified and Allowed Claims; (b) a  
8 Partially Satisfied Claim; and (c) Certain Partially Satisfied  
9 Scheduled Liabilities; (II) Disallow and Expunge (a) Certain  
10 Fully Satisfied Scheduled Liabilities; (b) Certain MDL-Related  
11 Claims; (c) Certain Union Claims, (d) Certain Personal Injury  
12 Claims; and (e) a Duplicate Claim; (III) Object to Certain (a)  
13 Preference-Related Claims; and (b) Preference-Related Scheduled  
14 Liabilities; and (IV) Modify Certain SERP-Related Scheduled  
15 Liabilities

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17 SIXTY-FIFTH OMNIBUS HEARING AGENDA:  
18 HEARING re Motion of the VEBA Committee for the Delphi Salaried  
19 Retirees Association Benefit Trust Pursuant to 11 U.S.C. §105  
20 and the Salaried OPEB Settlement Order to (I) Compel the  
21 Official Committee of Eligible Salaried Retirees to File its  
22 Final Report With the Court Pursuant to the Terms of the  
23 Salaried OPEB Settlement Order; and, (II) to Direct the Office  
24 of the United States Trustee to Disband the Official Committee  
25 Of Eligible Salaried Retirees

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2 HEARING re Motion of Tal-Port Industries, LLC For Allowance Of  
3 an Administrative Claim Pursuant to 11 U.S.C. § 503(b)(1)(A)  
4 and, in the Alternative, for Leave to File a Late  
5 Administrative Expense Claim Pursuant to Bankruptcy Rule  
6 9006(b)  
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Transcribed by: Lisa Bar-Leib

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P R O C E E D I N G S

THE COURT: All right. DPH Holdings.

MR. LYONS: Good morning, Your Honor. John Lyons on behalf of DPH Holdings Corp. and affiliated reorganized debtors. We are here today both on the sixty-fifth omnibus hearing and the forty-third claims hearing. We really have probably two matters where we have counsel here and one is going to be contested. The other, I think, is --

THE COURT: Okay.

MR. LYONS: -- not going to be contested.

THE COURT: Shall we do the claims hearing first since I think those probably are not contested, right?

MR. LYONS: Sure. The first one, Your Honor, is the claim -- well, it's just a continued matter. The workers' compensation claim of the Ohio Bureau of Workers' Comp.

THE COURT: Okay.

MR. LYONS: And that will be continued. That actually --

THE COURT: That's on appeal, though, isn't it?

MR. LYONS: There are many components. This is the underlying priority pre-petition claim, not for assessment but for the actual reimbursement claim.

THE COURT: Okay.

MR. LYONS: I suspect we may have a hearing, a real hearing, on that in June but --

1 THE COURT: All right.

2 MR. LYONS: -- we will -- we will certainly let the  
3 Court know.

4 THE COURT: Okay.

5 MR. LYONS: The next matter, number 2, is the claim  
6 objection hearing regarding the claim of Navistar. That matter  
7 has been resolved. Similarly, item number 3, Sensata, that  
8 matter has been resolved, too, by stipulations that the Court  
9 has already entered.

10 The fourth claim is the claim filed by Park  
11 Enterprises. It's claim number 9647.

12 THE COURT: Right.

13 MR. LYONS: It's a duplicate claim. 9647 was the  
14 first claim. They filed a second claim later that amended and  
15 superseded and that was claim 16395. Our relief was just to  
16 get rid of the original one. And with respect to claim 16395,  
17 we've agreed not to object on grounds of timeliness.

18 THE COURT: Okay. And, I guess, Longacre is the S&E  
19 of that claim and they, from what I can tell from their  
20 response, they acknowledge that the first one was duplicative.  
21 So --

22 MR. LYONS: I think counsel's in the room --

23 THE COURT: Is that right?

24 MR. LYONS: -- so --

25 MR. YUDELL: Good morning, Your Honor. Kenneth

1 Yudell, Aronauer, Re & Yudell, on behalf of Park Enterprises.  
2 Actually, Your Honor, the -- as I am -- I'm acting as local  
3 counsel so I only learned about this in the last day or two.

4 THE COURT: Okay.

5 MR. YUDELL: But as I understand it, the claim has  
6 actually been transferred to Park Enterprises.

7 THE COURT: Oh, all right. Fine.

8 MR. YUDELL: And I had not seen and I don't believe  
9 primary counsel has seen the supplemental response. But based  
10 on my discussions with counsel and what he said on the record  
11 here that they're waiving their objection to timeliness of the  
12 amended claim 16395 --

13 THE COURT: Right.

14 MR. YUDELL: -- that we have no objection to expunging  
15 the 9647.

16 THE COURT: Okay. So you can submit an order  
17 consistent with both of those points.

18 MR. LYONS: We will, Your Honor.

19 THE COURT: Okay. Thanks.

20 MR. LYONS: Yes, Your Honor. Next are items number 6  
21 and 7. And these are claims held by Madison Niche  
22 Opportunities LLC and Madison Investment Trust Series 38. We  
23 were informed yesterday that they are not going to oppose our  
24 relief. Basically, Your Honor, it's just to disallow claims  
25 that have already been scheduled that we scheduled due to cure

1 payments that were made to the counterparty. These claims, I  
2 understand, may have been subsequently transferred. But  
3 nonetheless, the liability underlying those claims has been  
4 extinguished or dramatically reduced. I think there's about a  
5 thousand dollar or so claim left on one of the claims.

6 THE COURT: Okay. All right. So in light of that,  
7 including there being no opposition, you can submit an order on  
8 those two claims --

9 MR. LYONS: We'll do, Your Honor.

10 THE COURT: -- granting the objection in the amount  
11 sought.

12 MR. LYONS: So that's it for the claims hearing  
13 agenda. And now to the sixty-fifth omnibus hearing agenda.  
14 The first item number 1, the VEBA motion, that has been  
15 continued once again. And that leaves --

16 THE COURT: Do you have any insight on that? I mean,  
17 I thought they were facing some sort of deadline and they were  
18 prodding me to be ready for a pleading. And --

19 MR. LYONS: Your Honor, it's -- I'm not sure exactly  
20 what's going on with it, too.

21 THE COURT: All right.

22 MR. LYONS: But we --

23 THE COURT: Okay.

24 MR. LYONS: -- have been told that they will  
25 ultimately --

1 THE COURT: All right.

2 MR. LYONS: -- file a motion and seek some sort of  
3 relief from Your Honor.

4 THE COURT: All right. Okay. That's fine.

5 MR. LYONS: Item number 2 is Tal-Port's late claim  
6 motion. I will cede the podium to Tal-Port's counsel.

7 THE COURT: Okay.

8 MR. SMITH: Good morning, Your Honor.

9 THE COURT: Good morning.

10 MR. SMITH: Neil Smith, McKenzie Hughes LLP, for Tal-  
11 Port Industries, LLC. Essentially, the background is that for  
12 making a motion for permission to file the -- or, excuse me --  
13 have the late administrative claim allowed --

14 THE COURT: Right.

15 MR. SMITH: And, frankly, Your Honor, the parties laid  
16 out their positions fairly thoroughly in their papers. I don't  
17 want to necessarily use up the Court's time rehashing all of  
18 that all over again. The only point I would to really kind of  
19 emphasize is the fact that Tal-Port's main issue was that they  
20 had these difficulties in determining the true amount of their  
21 claim because of the fact that the computers that were storing  
22 the information were actually on the debtors' -- under the  
23 debtors' control, effectively. And this kind of contributed to  
24 the delay in the filing.

25 THE COURT: All right. But they -- I mean, they did

1 file a claim.

2 MR. SMITH: Ultimately, yes, they did.

3 THE COURT: And it wasn't because they got any  
4 additional information, right? They eventually just filed  
5 what -- based on what they had.

6 MR. SMITH: They filed what they had based on their  
7 best information available. But I was even informed fairly --  
8 last night that they still had some questions about what the  
9 actual number might be.

10 THE COURT: Okay. But -- I mean, there's no -- is  
11 there any question that they could have filed a claim in that  
12 amount and said and such other additional amounts as may be  
13 subsequently liquidated? I mean, the definition of claim is  
14 very broad. It doesn't include just liquidated amounts.

15 MR. SMITH: Excuse me, Your Honor. It's true that the  
16 definition of claim is quite broad. And perhaps the debtor  
17 was -- excuse me -- the creditor was subject to an  
18 overabundance of caution and hesitation relating to the fact  
19 that they had this genuine information probably. The debtor  
20 was in control of the information. They were communicating --  
21 my understanding is that counsel -- the Mississippi counsel for  
22 Tal-Port was in communication with representatives of the  
23 debtors throughout this time. So I don't believe that this was  
24 a humungous shock to the debtors that it was filed albeit it  
25 was after the deadline.

1 THE COURT: Now Tal-Port was in its own Chapter 11  
2 case starting in November of 2008, right?

3 MR. SMITH: That is correct, Your Honor.

4 THE COURT: And it didn't -- it really wasn't in  
5 business then? It had shut down?

6 MR. SMITH: That is my understanding, Your Honor. I  
7 was -- I'm not a hundred percent sure on the exact status of  
8 their Chapter 11 but I don't believe they're -- I don't know --  
9 I'm not a hundred percent sure if they're operating right now,  
10 Your Honor.

11 THE COURT: Okay. Well, I think the -- well, it just  
12 ceased operations in the Mission, Texas facility, right? So it  
13 may have had other operations. But I'm assuming because it was  
14 in bankruptcy that they were -- I mean, should I infer that the  
15 person that -- the lawyer that you referred to was cognizant of  
16 bankruptcy law and knew what he was doing? Or she?

17 MR. SMITH: I believe we can probably infer that, Your  
18 Honor, yes.

19 THE COURT: Okay. All right. Okay. Anything else?

20 MR. SMITH: I think for the most part, I'll just rest  
21 on my papers, Your Honor.

22 THE COURT: Okay. All right. Okay. Very well.  
23 Thank you.

24 MR. SMITH: Thank you very much, Your Honor.

25 THE COURT: Okay.

1 MR. LYONS: Just very briefly, Your Honor, I mean,  
2 they did attach their proof of claim, forty invoices.

3 THE COURT: Well, it's down to the last two cents,  
4 \$89,459.02. So --

5 MR. LYONS: Right. So they obviously had possession  
6 and control of the invoices. And the communications, the only  
7 thing they attached to their papers, were actually three e-  
8 mails in 2011. So you couldn't infer any type of estoppel  
9 argument, for example, that somehow would convince them not to  
10 file a proof of claim. So other than that, we'll rely on our  
11 papers as well.

12 THE COURT: Okay. All right. I have before me a  
13 motion by Tal-Port Industries, LLC under Bankruptcy Rule  
14 9006(b) to have an administrative claim that it filed in this  
15 case on October 27, 2009, claim number 19804, deemed timely  
16 filed notwithstanding that the Court, in an order entered June  
17 16th, 2009, had established a bar date for administrative  
18 claims covered by the period of this proof of claim of July  
19 15th, 2009. That is, the proof of claim here is approximately  
20 three and a half months late. And consistent with the  
21 procedures that I adopted earlier in this case to deal with  
22 late claims, Tal-Port is seeking an order deeming it timely  
23 filed notwithstanding that lateness.

24 The motion states that on November 3, 2008, Tal-Port  
25 filed its own Chapter 11 case and slightly before that date had



1       ceased doing business out of the warehouse that it did out of a  
2       facility in Mission, Texas that it operated along with Delphi,  
3       the debtor in this case.

4               The motion states that Tal-Port requested Delphi for  
5       records that might support a claim in response to the bar date  
6       order but that it was unable to obtain such records and  
7       therefore filed the claim late in October of 2009 when it  
8       determined that it was not going to get any more records at  
9       least in the near term future from Delphi. It therefore filed  
10      a claim based on invoices in its own possession covering the  
11      period from September 20, 2007 through May 8, 2008 in the  
12      amount of \$89,459.02.

13             The record is clear, I believe, that Tal-Port had due  
14      and sufficient notice of the bar date and was able to file the  
15      claim albeit late based on records it had in its possession  
16      well before the bar date that would have enabled it to file the  
17      claim in a timely fashion. It's also clear under the law that  
18      it could have filed its claim in a liquidated amount and added  
19      in addition on the proof of claim form something to the effect  
20      as follows: and such other amounts for the applicable period  
21      which is for administrative claims arising prior to June 1,  
22      2009 as may be subsequently liquidated. That would have  
23      sufficiently identified the nature of Tal-Port's claims given  
24      that it was in one relationship with the debtor arising from  
25      the same business that gave rise to the invoices that were

1 attached to the proof of claim. Given that Tal-Port was in its  
2 own bankruptcy case, I believe it's fair to infer that it had  
3 sufficient knowledge of bankruptcy law to have filed a proof of  
4 claim that would have done that. But even a nondebtor, based  
5 on the definition of claim and the Code and the bar date order,  
6 should have known that it did not need to delay the filing of a  
7 proof of claim based on its concern that the claim was not  
8 entirely liquidated. But that to the contrary, the bar date  
9 order and the Code itself permits the filing of claims that are  
10 described sufficiently to identify the claim without  
11 liquidating it down to the last penny.

12 The motion does not allege more than discussions about  
13 trying to fix the amount of the claim between Tal-Port and  
14 Delphi. It does so only in the motion not in any affidavit by  
15 somebody engaged in such discussions. But more importantly, it  
16 does not suggest any tolling of the bar date by Delphi or even  
17 any statements by Delphi that could have misled Tal-Port into  
18 thinking that it did not need to file its proof of claim by the  
19 bar date but rather could wait until the numbers were  
20 liquidated by the parties.

21 Lastly, as I have repeatedly ruled in this case, I  
22 should note that the setting of an administrative claims bar  
23 date in this case was a very significant step in the case. The  
24 record of this case is clear, as summarized in the hearing  
25 transcript of August 20th, 2009 appended as an exhibit to

1 Delphi's objection to Tal-Port's motion, that the amount of  
2 asserted administrative claims was of critical importance to  
3 the parties negotiating Delphi's modified Chapter 11 plan and  
4 to the Court's confirmation of that plan in July of 2009. That  
5 is because there was a very serious issue as to whether the  
6 plan would be feasible given Delphi's cash position and the  
7 willingness of the plan funders to contribute cash to enable a  
8 plan to be confirmed. Under the Bankruptcy Code, unless  
9 waived, administrative expense claims must be paid in full for  
10 a plan to be feasible and confirmable. And therefore, the  
11 debtors sought entry of an order establishing an administrative  
12 claims bar date so that they and the parties with whom they  
13 were negotiating could determine the amount of at least  
14 asserted administrative expense claims to see whether, in fact,  
15 the plan would be confirmed or confirmable. And then the Court  
16 took testimony based in part upon the debtors' analysis of  
17 those filed claims in determining if the plan should be  
18 confirmed and would be feasible.

19 That is consistent with the repeated theme set forth  
20 in the case law that a bar date serves the important purpose of  
21 enabling the parties in interest in a bankruptcy case to  
22 ascertain with reasonable promptness the identity of those  
23 making claims against the estate and the general amount of the  
24 claims, a necessary step at achieving the goal of successful  
25 reorganization. In re Calpine Corp., 2007 U.S. Dist. LEXIS

1 86514, pp. 14-15 (S.D.N.Y., Nov. 21, 2007). See also, First  
2 Fidelity Bank, N.A. v. Hooker Investments, Inc., In re Hooker  
3 Investments, Inc., 937 F.2d. 833, 840 (2d. Cir. 1991) and In re  
4 Asia Global Crossing Ltd., 324 B.R. 503, 508 (Bankr. S.D.N.Y.,  
5 2005) and In re Drexel Burnham Lambert Group, Inc., 148 B.R.  
6 1002, 1008-10 (Bankr. S.D.N.Y., 1993) each of which note that  
7 strict enforcement of a bar date allows the trustee in  
8 bankruptcy or debtor-in-possession and the other parties in the  
9 case to evaluate the claims against the estate and negotiate a  
10 plan and that, therefore, the fixing of a bar date is not  
11 merely a simple procedural gaunt letter trap but performs a  
12 critical function in a bankruptcy case. That function was  
13 especially important, as I noted here earlier, in fixing the  
14 amount of the administrative claims in the case. The claim was  
15 filed after the confirmation hearing, as I noted, and therefore  
16 was not part of the analysis in connection with the hearing.

17 Bankruptcy Rule 9006(b)(1) permits a claimant to file  
18 a late proof of claim if the failure to submit a timely proof  
19 of claim was due to "excusable neglect". The burden of proving  
20 an excusable neglect is on the claimant seeking to extend the  
21 bar date. In re R.H. Macy & Company, 161 B.R. 355, 360 (Bankr.  
22 S.D.N.Y. 1993). The Supreme Court has developed a two-step  
23 test for determining whether a late filed claim was due to  
24 excusable neglect as set forth in Pioneer Investment Services  
25 Company v. Brunswick Associates Ltd. Partnership, 507 U.S. 380,

1 388 and 395 (1993). See also In re DPH Holdings Corp., 434  
2 B.R. 72 at 82 (S.D.N.Y. 2010).

3 Under that test, a movant must first show that its  
4 failure to file a timely claim constituted neglect as opposed  
5 to willfulness or knowing omission. Neglect usually or  
6 generally being attributed to a movant's inadvertent mistake or  
7 carelessness. Pioneer at 387, 388.

8 After establishing neglect, as opposed to willfulness  
9 or a knowledge of the bar date and the failure to show an  
10 unknowing basis for neglecting it, the movant must show by a  
11 preponderance of the evidence that the neglect was excusable.  
12 That analysis is to be undertaken on a case by case basis based  
13 on the particular facts although the Court is guided by and  
14 makes the determination balancing the following four factors:  
15 (1)whether the -- I'm sorry -- (1)the danger of prejudice to  
16 the debtor; (2)the length of the delay and whether or not it  
17 would impact the case; (3)the reason for the delay and, in  
18 particular, whether the delay was within the control of the  
19 movant; and (4)whether the movant acted in good faith. Id. at  
20 395.

21 The rule in the following analysis is equally  
22 applicable to administrative claims filed after a bar date as  
23 it is to general unsecured claims filed after a bar date. See  
24 In re Dana Corp., 2007 WL 157763 at page 3 (Bankr. S.D.N.Y.,  
25 Aug. 20, 2009) as well as In re P.T. Communications, Inc., 386

1 B.R. 402 (Bankr. E.D.N.Y. 2007). In this circuit, as set forth  
2 in Midland Cogeneration Venture L.P. v. Enron Corporation, In  
3 re Enron Corporation, 419 F.3d 115 at 126 (2d Cir. 2005), the  
4 Courts take a hard line in applying the Pioneer test and,  
5 further, that the first and primary focus should be on the  
6 third factor set forth in Pioneer; that is, the reason for the  
7 delay, including whether it was within the reasonable control  
8 of the movant. As the Second Circuit noted in the Midland  
9 Cogeneration case, in a typical case, three of the Pioneer  
10 factors, the length of the delay, the danger of prejudice and  
11 the movant's good faith, usually weigh in favor of the party  
12 seeking the extension. However, the Circuit went on to caution  
13 that the equities will rarely, if ever, favor a party who fails  
14 to follow the clear dictates of a Court rule or, in this case,  
15 a Court order and that where the rule is entirely clear, we  
16 continue to expect that a party claiming excusable neglect  
17 will, in the ordinary course, lose under the Pioneer test where  
18 the failure to comply was within the control of the movant.  
19 Id. at 122-123. See also In re Musicland Holding Corporation,  
20 2003 Bankr. LEXIS 3315 at pp. 10-11 (Bankr. S.D.N.Y. 2006) in  
21 which then Chief Judge Bernstein citing Midland stated that the  
22 Second Circuit focuses on the reason for the delay in  
23 determining excusable neglect under Pioneer and that the other  
24 factors are relevant only in closed cases.

25 As noted in Midland Cogeneration, inadvertence,

1 ignorance of the rules or mistakes construing the rules do not  
2 usually constitute excusable neglect. Here, as noted in  
3 Delphi's objection, it's not entirely clear that this is a case  
4 of neglect as opposed to a case of the claimant making a  
5 conscious choice not to file a timely claim. As set forth in  
6 paragraph 14 of Tal-Port's motion, "Tal-Port generally desired  
7 to resolve any and all outstanding amounts with representatives  
8 of Delphi of which it had a longstanding relationship without  
9 having to resort to the course of filing an administrative  
10 claim." One can certainly infer from that sentence and from  
11 the facts generally that while Tal-Port was proceeding in good  
12 faith, it chose not to file a claim and perhaps also chose not  
13 to hire a lawyer to file a proof of claim because it determined  
14 that it would rather try to resolve amounts outstanding without  
15 the need to do so. This is particularly the case as it was not  
16 on the record in any way misled by Delphi into believing that  
17 it did not have to file a claim by the bar date.

18 However, I will go to the next step of the Pioneer  
19 analysis and consider whether the failure to file the claim was  
20 excusable. And having considered the facts and circumstances  
21 here, I conclude that the late filing of the claim was not, in  
22 fact, excusable under the Pioneer test in Midland Cogeneration.  
23 The filing of the claim on a timely basis was here wholly  
24 within the control of Tal-Port. The claim that it actually did  
25 file, which, as I noted, was liquidated down to the last penny,

1 was based on the information that the motion acknowledges it  
2 always had within its own possession.

3 Secondly, the Code and bar date order clearly  
4 contemplate and permit a claimant such as Tal-Port to file a  
5 claim in a liquidated amount and an amount to be liquidated  
6 based upon the same set of facts or business relationship  
7 supporting the liquidated claim. Yet, Tal-Port did not do  
8 that. Therefore, the most important Pioneer factor is not  
9 satisfied here.

10 In addition, the delay of three and a half months was  
11 material. The claim was filed after the confirmation hearing  
12 as well as, again, three and a half months late as opposed to,  
13 for example, a day or so late, although I'll note that there  
14 are cases that find that even that short of a delay of a day or  
15 so does not ultimately mitigate against denying the Pioneer  
16 motion where the delay was within the movant's control.

17 The factor of the movant's good faith is established  
18 but as noted in a number of cases, including the Midland  
19 Cogeneration case, it is usually established in these types of  
20 motions.

21 Finally, the issue of prejudice is, at best, evenly  
22 balanced here. As I noted, the administrative claims bar date  
23 in this case was especially significant. On the other hand,  
24 the amount of the claim, \$89,459.02, is not huge in the context  
25 of this entire case and probably would not have caused me to



1 deny confirmation of the plan if it had been timely filed.

2 On the other hand, given the other factors here, I  
3 believe that if I were to grant this motion, it would open the  
4 door to numerous other motions for leave to file or to be  
5 deemed timely filed a tardy proof of claim in this case that,  
6 on similar facts, I have denied. That is, although this may  
7 well be the last one of these motions in the case, I believe  
8 that it would, in effect invite the reopening of those matters  
9 and perhaps also inspire other parties who did not file timely  
10 claims to file motions since it would go against the logic and  
11 analysis of several rulings in the case which I have to assume  
12 anyone who had a late claim would have reviewed.

13 That consideration, i.e., the effect of allowing a  
14 late filed claim on whether there would be numerous other  
15 claims also filed in the case on a tardy basis has been  
16 recognized in a number of the cases as an extra element, or an  
17 appropriate element to consider when considering Pioneer's  
18 prejudice factor. See *In re Dana Corp.*, 2007 WL 157763 at page  
19 6. And see also *Midland Cogeneration*, 419 F.3d at 132 \*2 and  
20 *In re Enron Creditors Recovery Corporation*, 370 B.R. 90, 103  
21 (Bankr. S.D.N.Y. 2007).

22 Therefore, in weighing all of the factors and assuming  
23 for the purpose of that analysis that the claim was filed late  
24 based on neglect as opposed to a conscious decision, I conclude  
25 that the late filing here was not excusable and therefore I'll

1 deny the motion.

2 So DPH should submit an order consistent with that  
3 ruling.

4 MR. LYONS: Thank you, Your Honor. We will do so.  
5 And that's all I have on the omnibus agenda.

6 THE COURT: Okay. Thank you.

7 MR. SMITH: Thank you, Your Honor.

8 THE COURT: Thank you.

9 (Whereupon these proceedings were concluded at 10:48 a.m.)  
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I N D E X

R U L I N G S

DESCRIPTION	PAGE	LINE
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Rochester, Inc. sustained		
Debtors' 43rd omnibus objection to claims	12	11
held by Madison Niche Opportunities LLC and		
Madison Investment Trust Series 38 sustained		
Tal-Port Industries, LLC's motion to have its	26	1
late administrative claim allowed denied		

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C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a  
true and accurate record of the proceedings.

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LISA BAR-LEIB  
AAERT Certified Electronic Transcriber (CET\*\*D-486)

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Date: April 25, 2011